In the Supreme Court

OF THE

United States

OCTOBER TERM, 1940

No. 341

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COUNTY OF FRESNO and WALTER S. HENDERSON, JR., Assessor of the County of Fresno, State of California,
Petitioners,

vs.

COMMODITY CREDIT CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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No.

COUNTY OF FRESNO and WALTER S. HENDERSON, JR., Assessor of the County of Fresno, State of California,

Petitioners,

vs.

COMMODITY CREDIT CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI

to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Petitioners, County of Fresno and Walter S. Henderson, Jr., Assessor of the County of Fresno, State

of California, respectfully pray that a writ of certiorari issue to the United States Circuit Court of Appeals for the Ninth Circuit to review the decree of that Court entered on June 12, 1940 (R. 51, ... Fed. (2d).....), affirming the order and judgment of the District Court of the United States for the Southern District of California, Northern Division (R. 22-25, ...Fed. Supp....., March 4, 1939), holding that personal property taxes levied, by the County of Fresno, State of California, on certain cotton situate in that county were improperly levied because the respondent herein had acquired a pledgee's lien thereon.

QUESTIONS PRESENTED.

I. Whether the respondent, Commodity Credit Corporation, was constitutionally created, ever since has been and is now functioning under any constitutional authority;

II. Whether Personal Property that has been pledged to the Commodity Credit Corporation "belongs to" said Corporation;

III. Whether a county of the State of California may legally levy a tax upon personal property located within its boundaries at twelve o'clock M. on the first Monday in March although that property has been pledged to the Commodity Credit Corporation (a) after and (b) prior to said day;

IV. Whether personal property that has been pledged to the Commodity Credit Corporation "belongs to" the United States;

V. Whether a county of the State of California may legally collect a tax levied upon personal property by a "tax sale" without selling the property subject to the pledge lien acquired by the respondent.

STATUTES INVOLVED.

Rather than quote all the state and federal constitutional and statutory provisions that are applicable to the instant matter we have attached the same to the brief in support of this petition as Exhibit A. (Appendix p. 1.)

However, in order that the Court may have a rather complete picture of the taxing processes of the counties throughout the State of California, we present herein a brief summary of the pertinent constitutional and statutory provisions of the State of California. (The Constitutional and Political Code Sections referred to are quoted in the Appendix.)

While the State of California has the right to levy ad valorem taxes on property situated within its territorial jurisdiction, nevertheless, the State is not at the present time exercising that right and the expenses of operating the state government are generally supplied by indirect excise taxes. The taxa-

tion of property, according to its value, is left to the counties, cities, etc.

All personal property save such as may belong to the United States (and other exemptions not material herein), must be assessed to and in the name of the person who owns or who has possession thereof. (See Section 1 of Article XIII of the Constitution, Sections 3628 and 3636, Pol. Code.) In order to determine whether any particular piece of personal property is subject to assessment during any particular year it is necessary to determine its status as of the first Monday in March immediately preceding the fiscal year for which the assessment is levied. (See Section 8 of Article XIII and Section 3628, supra, and *Dodge v. Nevada National Bank,* 109 Fed. Rep. 726, 731, 732, and *East Bay Municipal District v. Garrison,* 191 Cal. 680, 690, 218 Pac. 43.)

The assessment is made between the first Monday in March and the first Monday in July in any particular year. (See Section 3628, Political Code.) This assessment is levied upon the full assessable value of the property in question. (Section 3627, Political Code.) In order to facilitate the assessment of property the owners thereof or the person in possession is required to file with the assessor a statement of all the property owned by him or in his possession. (Section 3629, Political Code.) The assessor is required to enter his assessment upon "an assessment roll" showing the personal property owned or in possession separately from the real property. (Section 3650, Political Code.)

If, in the assessor's discretion or opinion the person assessed does not have sufficient real property to secure the payment of the personal property tax levied the assessor is authorized to proceed to collect the same. (Section 3820, Political Code.)

The county is given its choice of several remedies to effect this collection. It may, on the one hand, bring a personal action against the person assessed, pursuant to the provisions of the statutes of 1903, page 130, or it may, on the other hand, have the assessor proceed to seize or distrain and sell the property pursuant to the provisions of Section 3821, Political Code.

Section 3821 authorizes the assessor to seize *any* personal property owned by the person against whom the assessment is levied.

The taxes levied against personal property are a lien on any real property owned by the person against whom the personal property taxes were levied. (See Section 3717, Political Code.)

Section 3716 of the Political Code does, in our estimation, provide for a priority for real and *personal property taxes levied* by county officials. (Appendix p. 5.)

STATEMENT OF THE CASE.

This case involves an appeal in the Circuit Court of Appeals of the United States for the Ninth Circuit by the petitioners who are the County of Fresno, a political subdivision of the State of California, and

Walter S. Henderson, Jr., the assessor of the County of Fresno, from a judgment of the District Court of the United States for the Southern District of California, Northern Division.

On October 25, 1938, the respondent, Commodity Credit Corporation, filed its amended bill of complaint, for a declaratory judgment, in said District Court. (R. pp. 4-19.)

The complaint asked the District Court to adjudge and declare that (1) the Commodity Credit Corporation was an instrumentality of the United States engaged in governmental functions, and (2) that it acquired, by the negotiation to it of warehouse receipts, rights, liens, and interests in and to the cotton in question herein, and (3) that such rights, etc. are immune from taxation by a political subdivision of the State of California, and (4) that any seizure or sale of the cotton herein, in the event of the nonpayment of such taxes, is illegal and void unless made expressly subject to the Commodity Credit Corporation's rights, interests, and liens in such cotton. (R. pp. 16-19.)

The petitioners herein moved to dismiss the bill of complaint. (R. p. 21.) The District Court denied that motion (R. p. 22) and entered its judgment for the declaratory relief prayed for in said complaint. (R. pp. 23-25.)

(It is to be noted that the District Court did not, in its opinion (R. p. 22) discuss (1) the constitutionality of the Commodity Credit Corporation or (2) the relative priority of the tax claim and the

Corporation's claim as pledgee, i. e., it merely held that any interest acquired by the Corporation by virtue of its pledge was immune from state taxation although some of the cotton in question had been pledged to the Corporation *after* the first Monday in March, 1938.)

The material facts, as alleged in the bill of complaint (R. pp. 4-19) and admitted by the motion to dismiss (R. p. 21), are as follows:

The Commodity Credit Corporation (hereinafter referred to as the Corporation) was organized under the laws of the State of Delaware and its entire capital stock is owned by the United States. (R. pp. 4-5.) (A copy of its articles of incorporation is attached to the brief in support of this petition as Exhibit B, Appendix p. 15.)

In the course of the Corporation's operations it advanced large sums of money to the producers of cotton deposited in a warehouse in the County of Fresno, State of California (hereinafter called the County). *The amount of money advanced was equal to or in excess of the value of the cotton.* The advances on such cotton were secured by the cotton and negotiable warehouse receipts which have been delivered to and are held by the Corporation. Under loan agreements (a copy of a typical agreement is attached to the supporting brief herein as Exhibit C, Appendix p. 25), pursuant to which the money was advanced, the cotton is pledged to the Corporation as security for the repayment of the advances and certain incidental costs. The Corporation has the right to pos-

session of the cotton, by virtue of the negotiation to it of the warehouse receipts, and in case the producers do not repay the advances, it has the right to sell the same but *does not have the right to hold the producers personally liable for any deficiencies resulting from those sales.* (R. p. 12.)

The Corporation made the loans and the cotton was pledged to it, as security, (1) *prior to twelve o'clock meridian, March 7, 1938,* (2) *on said date* and (3) *after* that date. (R. pp. 12-14.)

The cotton has continuously since March 7, 1938, remained on deposit in the warehouse and the Corporation has continued to hold and now holds warehouse receipts therefor.

From time to time, between March 7, 1938, and June 21, 1938, the assessor of the County levied assessments upon all the cotton deposited in warehouses in that County, including all of the cotton covered by warehouse receipts held by the Corporation. (Those warehouse receipts having been acquired both before and after the assessments.) The cotton *was assessed to unknown owners,* at the full assessable value and, in the case of the cotton covered by warehouse receipts held by the Corporation without any deductions or allowances whatsoever being made by reason of the Corporation's rights or liens claimed to have been acquired by virtue of the pledge. (R. p. 14.)

On June 21, 1938, the assessor of the County seized and gave notice that he, on that day, seized possession of 20,990 bales of cotton (the assessment amounted to $419,800 and a tax of $17,505.66 was levied thereon),

in the warehouse and that he would sell the same or so much thereof as might be necessary to satisfy the taxes levied against the 20,990 bales of cotton on June 29, 1938. The 20,990 bales so assessed and seized and noticed for sale included cotton that had been pledged to the Corporation. (R. p. 15.)

The Corporation commenced this action for declaratory relief for the purpose heretofore mentioned. (R. pp. 18-19.)

On May 4, 1939, the petitioners filed their notice of appeal from the judgment of the District Court (R. pp. 25-26) and on June 19, 1939, they filed their statement of points to be relied upon on appeal and designation of the record to be printed. (R. pp. 32-36.)

Thereafter, and on June 13, 1940, the Circuit Court of Appeals rendered its opinion affirming the judgment of the District Court. (R. p. 43.)

(It is to be noted that although (1) the specification of errors (R. pp. 32-33), (2) the County's opening and closing briefs and (3) the Corporation's reply brief did not mention or discuss the relative priority (Section 3716, Political Code) of the tax claim and the Corporation's alleged pledge lien, the opinion of the Circuit Court dealt solely with this question. (*This* priority issue was raised by the Court during the oral argument and supplemental briefs were filed thereon.))

The Circuit Court did not *expressly* decide (1) the right of the County to levy a tax under these circumstances and (2) the constitutional issue as to the

validity of the creation and continued existence of the Commodity Credit Corporation.

This petition was filed for the purpose of having this Honorable Court review the decree of the Circuit Court of Appeals.

SPECIFICATIONS OF ERROR.

I. The Circuit Court of Appeals erred in not holding that the Commodity Credit Corporation was unlawfully created and was, at all times pertinent herein, operating without constitutional authority;

II. The Circuit Court of Appeals erred in not holding that a corporation created and operating without constitutional authority could not be the holder of a lien interest in the cotton in question;

III. The Circuit Court of Appeals erred in holding that there was in existence a lien on the cotton in question herein;

IV. The Circuit Court of Appeals erred in not *specifically* holding (although it did so by implication or did so arguendo) that the County of Fresno could legally levy a tax on cotton situated in that County on the first Monday in March, 1938, and owned, at that time, by a taxable individual;

V. The Circuit Court of Appeals erred in not *specifically* holding (although it did so by im-

plication or did so arguendo) that the County of Fresno could legally levy a tax on cotton situated in that County on the first Monday in March, 1938, and owned, at that time, by a taxable individual even though it was, at that time, pledged to the Commodity Credit Corporation as security for loans made to the producer/owner of that cotton;

VI. The Circuit Court of Appeals erred in holding that the alleged lien of the Corporation was entitled to priority over the tax claim of the County of Fresno;

VII. The Circuit Court of Appeals erred in not holding that the County of Fresno could sell, at a tax sale, as provided by Statutes of the the State of California, that cotton free and clear of any alleged rights, interests, and liens of the Commodity Credit Corporation in that cotton;

VIII. The Circuit Court of Appeals erred in not discussing or deciding fundamental and pertinent constitutional issues that were raised and presented and the answers to which were essential and necessary for a proper disposition of the present cause.

REASONS FOR GRANTING THE WRIT.

(1) The Circuit Court of Appeals has decided an important question of local law in a way in conflict

(1) with applicable decisions of the Courts of last resort in California, and (2) pertinent California Statutes:

Calif. Loan and Trust Co. v. Weis, 118 Cal. 489, 50 Pac. 697;

O'Dea v. Mitchell, 144 Cal. 374, 381, 77 Pac. 1020, 1022;

Woodil & Hulse Elec. Co. v. Young, 180 Cal. 667, 669, 670, 182 Pac. 422, 424;

San Mateo County Bank v. Dupret, 124 Cal. App. 395, 396, 12 Pac. (2d) 669, 670;

Sec. 3716, *Political Code, California.*

We believe that these cases definitely establish the principle that in the State of California a tax levied on *real or personal property* is entitled to priority over a privately held lien on such property irrespective of the time that lien was acquired (we are assuming, arguendo, that there was an outstanding lien in the present cause).

The Circuit Court of Appeals relied on *Guinn v. McReynolds,* 177 Cal. 230, 232, 170 Pac. 421, which is in conflict with the decisions of the Courts of the State of California, which we have heretofore cited.

We believe that Section 3716 establishes a statutory priority for *all local* ad valorem taxes in the State of California.

Further we believe that by seizure of the cotton by the assessor pursuant to Section 3821 of the Political Code, petitioners acquired a lien thereon

which is granted priority over private liens by the provisions of Section 3716 of the Political Code.

R.C.A. Photophone Inc. v. Huffman, 5 Cal. App. (2d) 401, 42 Pac. (2d) 1059.

(2) The decision of the Circuit Court of Appeals has, by implication, decided important questions of federal law which have not been, but should be settled by the Supreme Court of the United States.

While the Circuit Court of Appeals did not definitely decide that (1) the Commodity Credit Corporation was lawfully created and was now operating under constitutional authority or (2) that the County of Fresno had constitutional authority to levy a tax on cotton, situated therein, but pledged to the Corporation to secure a loan in excess of the value of the cotton, nevertheless, the Circuit Court of Appeals has, by implication, decided these federal questions. This is so because (1) the County of Fresno contended, *inter alia,* in the Circuit Court, that there was no outstanding pledgee's lien against or on the cotton in question and therefore the judgment of the District Court should be reversed. The basis of such contention was that the Corporation (allegedly having a lien) did not have any legal existence.

This is so because (2) the Corporation contended, *inter alia,* in the Circuit Court, that the question of the relative priority of the tax claim and its pledgee's lien was immaterial because the County's taxes were illegally levied on cotton "belonging to" the United States or the Commodity Credit Corporation.

Considering these two contentions, *which were the sole issues briefed prior to the oral argument before the Circuit Court,* it necessarily follows from a reading of the Circuit Court's opinion (R. pp. 43-50) that the Circuit Court decided, by implication, that (1) the Commodity Credit Corporation was lawfully created and is now operating and functioning pursuant to constitutional authority, and (2) that the County of Fresno could constitutionally tax cotton, situated in that County on the first Monday of March, 1938, although that property was pledged to the Commodity Credit Corporation, and (3) that the only issue before the Circuit Court was the question of the relative priority, *under state law,* of the Corporation's lien and a valid tax claim.

These constitutional issues present great and important questions of federal law which have not been, but should be settled by the Supreme Court of the United States.

Applicable decisions of this Court and of other Courts will be cited and discussed in our brief in support of this petition.

(3) The Circuit Court of Appeals has, by implication, decided a federal question in conflict with decisions of this Court.

In (2) supra, we believe that we have established that the Circuit Court of Appeals decided, by implication or arguendo, that the Corporation was validly created and is now operating pursuant to constitutional authority.

Inasmuch as it is our position that (1) the act purporting to authorize the creation of the Corporation unlawfully delegated legislative power to the President of the United States and (2) that the sole purpose for which the Corporation was created and is now operating is to control the *local production* of agricultural commodities, we submit that the decision of the Circuit Court is in conflict with the following decisions of this Court:

Mulford v. Smith, 307 U. S. 38;
Schechter Corp. v. U. S., 295 U. S. 495;
U. S. v. Butler, 297 U. S. 1;
Ashwander v. T.V.A., 297 U. S. 288;
Carter v. Coal Co., 298 U. S. 238;
Panama Refining Co. v. Ryan, 293 U. S. 388;
Hammer v. Dagenhart, 247 U. S. 251;
Currin v. Wallace, 306 U. S. 1;
Labor Board v. Jones & Laughlin, 301 U. S. 1, 30, 40, 45.

We shall present in our supporting brief our argument in support of our contentions that (1) the act purporting to create the Commodity Credit Corporation unlawfully delegated congressional power to the President of the United States and (2) that the Corporation was created for the sole purpose of controlling *local production* of agricultural commodities.

(4) The Court should grant this petition in order that this Court may have the opportunity to pass upon constitutional issues of great public importance.

It is in the public interest that the issue in regard to the constitutionality of the Commodity Credit Cor-

poration and in regard to the right of a political subdivision of a state to *levy and collect* a *non-discriminatory* property tax on commodities pledged to an instrumentality of the federal government should be decided by the Supreme Court of the United States.

The federal government has, since 1933, created many corporations under circumstances similar to those found herein and will, under present trends, create more of such corporations in the future or the functions of the existing corporations will be enlarged and expanded.

These corporations have had and will have millions of dollars placed at their disposal and consequently in distributing this money in commercial channels throughout the United States they have affected and will affect the commercial and industrial lives of the citizens of this country.

In the meantime the various states of these United States have found that their taxing power was in danger of being curtailed by this ever-increasing expansion of activities by the federal government.

The present cause affords, we believe, an opportunity to this Court to consider, for the first time, the validity of one of the instrumentalities used by the Federal government so to expand its activities and at the same time to consider the effect such expansion must necessarily have on the taxing powers of the various states.

The answers to these questions are, at the present time, of fundamental importance to the federal government and the respective states within that government. They should be advised, by this Court, as to the proper scope of their respective powers.

The Court has, in recent terms, we respectfully submit, made fundamental shifts in two constitutional doctrines, i.e., power of Congress under the commerce clause and in the interpretation of the "implied immunity doctrine". The present cause requires an application of those doctrines, as recently construed, in a case where the real parties in interest are the federal government and one of the states of the United States.

In view of these facts, we believe that it is in the public interest that this Court pass upon the fundamental constitutional issues presented by the instant matter in order that the respective governments involved herein may adjust their future actions accordingly.

No one can definitely say, under the opinions rendered herein, whether (1) the Corporation was lawfully created, or (2) a State or its political subdivisions can levy a tax on property pledged to the Corporation or any other federal corporation.

Wherefore, it is respectfully submitted that this petition for certiorari to review the judgment and decree of the United States Circuit Court of Ap-

peals for the Ninth Circuit in the above mentioned cause should be granted.

Dated, Fresno, California,
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